

STATEMENT OF EMERGENCY

907 KAR 9:005E

(1) This emergency administrative regulation is being promulgated to establish service and coverage policies for Level I and Level II psychiatric residential treatment facility (PRTF) services. Previously there was one (1) category of such services – PRTF services – then KRS 216B.450 created two (2) categories – Level I and Level II PRTF services. A companion administrative regulation, 907 KAR 9:010, establishes the reimbursement policies for Level I and Level II PRTF services.

(2) This action must be implemented on an emergency basis to comport with KRS 216B.450 and to establish Medicaid service and coverage policies for providers of Level I and Level II PRTF services; thus, ensuring the reimbursement for the services and protecting the health, safety, and welfare of Medicaid recipients who receive such services.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.

Steven L. Beshear
Governor

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Healthcare Facilities Management

4 (Emergency Amendment)

5 907 KAR 9:005E. Level I and II psychiatric residential treatment facility service and
6 coverage policies~~[services]~~.

7 RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R.
9 440.160, 42 U.S.C. 1396a-d~~[, EO 2004-726]~~

10 NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726, effective July 9, 2004,~~
11 ~~reorganized the Cabinet for Health Services and placed the Department for Medicaid~~
12 ~~Services and the Medicaid Program under the Cabinet for Health and Family Services.]~~

13 The Cabinet for Health and Family Services, Department for Medicaid Services, has a
14 responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the
15 cabinet, by administrative regulation, to comply with any requirement that may be
16 imposed or opportunity presented by federal law to qualify for federal Medicaid funds~~[for~~
17 ~~the provision of medical assistance to Kentucky's indigent citizenry]~~. This administrative
18 regulation establishes Medicaid program coverage policies regarding Level I and Level
19 II~~[provisions relating to coverage of]~~ psychiatric residential treatment facility services.

20 Section 1. Definitions. (1) "Active treatment" means a covered Level I or II psychiatric
21 residential treatment facility ~~[(PRTF)]~~service provided:

(a) ~~[Including nursing care, mental health, case coordination, psychiatric therapies, task and skills training]~~ In accordance with an individual plan of care as specified in 42 CFR 441.154; and

(b) ~~[Provided]~~ By an individual employed or contracted by a Level I or II PRTF including a:

1. Psychiatrist;

2. Qualified mental health personnel;

3. Qualified mental health professional;

4. Mental health associate; or

5. Direct care staff person.

(2) "Acute care hospital" is defined by KRS 205.639(1).

(3) "Child with a severe emotional disability" is defined by KRS 200.503(2).

~~(4)[2. Social worker; or~~

~~3. Direct care staff person; and~~

~~(c) Which shall not be subcontracted.~~

~~(2)]~~"Department" means the Department for Medicaid Services or its designee.

(5) "Diagnostic and assessment services" means at least one (1) face-to-face specialty evaluation of a recipient's medical, social, and psychiatric status provided by a physician or qualified mental health professional that shall:

(a) Include testing and interviewing;

(b) Be documented and record all contact with the recipient and other interviewed individuals; and

(c) Result in a:

1 1. Diagnosis code in accordance with 45 CFR 162.1000; and
2 2. Specific treatment recommendation.
3 (6) “Federal financial participation” is defined by 42 CFR 400.203.
4 (7) “Intensive treatment services” means a program:
5 (a) For a child:
6 1. With a severe emotional disability; and
7 a. A severe and persistent aggressive behavior, intellectual disability, or sexually
8 acting out behavior; or
9 b. A developmental disability;
10 2. Who requires a treatment-oriented residential environment; and
11 3. Between the ages of four (4) to twenty-one (21) years; and
12 (b) That provides psychiatric and behavioral health services two (2) or more times per
13 week to a child referenced in paragraph (a) of this subsection:
14 1. As indicated by the child’s psychiatric and behavioral health needs; and
15 2. In accordance with the child’s therapeutic plan of care.
16 (8) “Interdisciplinary team” means:
17 (a) For a recipient who is under the age of eighteen (18) years:
18 1. A parent, legal guardian, or care giver of the recipient;
19 2. The recipient;
20 3. A qualified mental health professional; and
21 4. The staff person, if available, who worked with the recipient during the recipient’s
22 most recent placement if the recipient has previously been in a Level I or II PRTF; or
23 (b) For a recipient who is eighteen (18) years of age or older:

1 1. The recipient;

2 2. A qualified mental health professional; and

3 3. The staff person, if available, who worked with the recipient during the recipient's
4 most recent placement if the recipient has previously been in a Level I or II PRTF.

5 (9) "Level I PRTF" means a psychiatric residential treatment facility that meets the
6 criteria established in KRS 216B.450(5)(a).

7 (10) "Level II PRTF" means a psychiatric residential treatment facility that meets the
8 criteria established in KRS 216B450(5)(b).

9 (11)[(3)] "Medicaid payment status" means a circumstance in which:

10 (a) The person:

11 1. Is eligible for and receiving Medicaid benefits; and

12 2. Meets patient status criteria for Level I or II psychiatric residential treatment facility
13 [(PRTF)]services; and

14 (b) The facility is billing the Medicaid program for services provided to the person.

15 (12)[(4)] "Medically necessary" or "medical necessity" means that a covered benefit is
16 determined to be needed in accordance with 907 KAR 3:130.

17 (13) "Mental health associate" is defined by 902 KAR 20:320.

18 (14) "Physician" is defined by KRS 311.550(12).

19 (15) "Private psychiatric hospital" is defined by KRS 205.639(2).

20 (16) "Psychiatric services" means:

21 (a) An initial psychiatric evaluation of a recipient which shall include:

22 1. A review of the recipient's:

23 a. Personal history;

1 b. Family history;
2 c. Physical health;
3 d. Prior treatment; and
4 e. Current treatment;
5 2. A mental status examination appropriate to the age of the recipient;
6 3. A meeting with the family or any designated significant person in the recipient's
7 life;
8 4. Ordering and reviewing:
9 (i) Laboratory data;
10 (ii) Psychological testing results; or
11 (iii) Any other ancillary health or mental health examinations;
12 (b) Development of an initial plan of treatment which shall include:
13 1. Prescribing and monitoring of psychotropic medications; or
14 2. Providing and directing therapy to the recipient;
15 (c) Implementing, assessing, monitoring, or revising the treatment as appropriate to
16 the recipient's psychiatric status;
17 (d) Providing a subsequent psychiatric evaluation as appropriate to the recipient's
18 psychiatric status; and
19 (e) Consulting with another physician, an attorney, police, a school, a treatment
20 program, or other organization regarding the recipient's care and treatment.
21 ~~(17)[shall be:~~
22 ~~(a) Provided in accordance with 42 CFR 440.230;~~
23 ~~(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate~~

1 palliate, or prevent a disease, illness, injury, disability, or other medical condition,
2 including pregnancy;

3 (c) Clinically appropriate in terms of amount, scope, and duration based on
4 generally-accepted standards of good medical practice;

5 (d) Provided for medical reasons rather than primarily for the convenience of the
6 recipient, caregiver, or the provider;

7 (e) Provided in the most appropriate location, with regard to generally-accepted
8 standards of good medical practice, where the service may, for practical purposes, be
9 safely and effectively provided;

10 (f) Needed, if used in reference to an emergency medical service, to evaluate or
11 stabilize an emergency medical condition that is found to exist using the prudent
12 layperson standard; and

13 (g) Provided in accordance with early and periodic screening, diagnosis, and
14 treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR Part 441
15 Subpart B for Medicaid-eligible persons under twenty-one (21) years of age.

16 (5) "Psychiatric residential treatment facility" or "PRTF" is defined by KRS
17 216B.450(5).

18 (18) "Qualified mental health personnel" is defined by KRS 216B.450(6).

19 (19) "Qualified mental health professional" is defined by KRS 216B.450(7).

20 (20) "State mental hospital" is defined by KRS 205.639(3).

21 (21) "Treatment plan" means a plan created for the care and treatment of a recipient
22 that:

23 (a) Is developed in a face-to-face meeting by the recipient's interdisciplinary team;

1 (b) Describes a comprehensive, coordinated plan of medically necessary behavioral
2 health services that specifies a modality, frequency, intensity, and duration of services
3 sufficient to maintain the recipient in a PRTF setting; and

4 (c) Identifies:

5 1. A program of therapies, activities, interventions, or experiences designed to
6 accomplish the plan;

7 2. A qualified mental health professional, a mental health associate, or qualified
8 mental health personnel who shall manage the continuity of care;

9 3. Interventions by care givers in the PRTF and school setting that support the
10 recipient's ability to be maintained in a PRTF setting;

11 4. Behavioral, social, and physical problems with interventions and objective,
12 measurable goals;

13 5. Discharge criteria for each of the requested services that specifies the:

14 a. Recipient-specific behavioral indicators for discharge from the service;

15 b. Expected service level that would be required upon discharge; and

16 c. Identification of the intended provider to deliver services upon discharge;

17 6. A crisis action plan that progresses through a continuum of care that is designed to
18 reduce or eliminate the necessity of inpatient services;

19 7. A plan for:

20 a. Transition to a lower intensity of services; and

21 b. Discharge from PRTF services;

22 8. An individual behavior management plan;

1 9. A plan for the involvement and visitation of the recipient with the birth family,
2 guardian, or other significant person, unless prohibited by a court, including therapeutic
3 off-site visits pursuant to the treatment plan; and

4 10. Services and planning, beginning at admission, to facilitate the discharge of the
5 recipient to an identified plan for home-based services or a lower level of care~~[KRS~~
6 ~~216B.450(4)]~~.

7 Section 2. Provider Participation. (1) In order to participate, or continue to participate,
8 in the Kentucky Medicaid Program, a:

9 (a) Level I PRTF shall:

10 1. Have a utilization review plan for each recipient consisting of, at a minimum, a pre-
11 admission certification review submitted via telephone or electronically to the review
12 agency prior to admission of the recipient;

13 2. Perform and place in each recipient's record:

14 a. A medical evaluation;

15 b. A social evaluation; and

16 c. A psychiatric evaluation;

17 3. Establish a plan of care for each recipient which shall be placed in the recipient's
18 record;

19 4. Appoint a utilization review committee which shall:

20 a. Oversee and implement the utilization review plan; and

21 b. Evaluate each Medicaid admission and continued stay prior to the expiration of the
22 Medicaid certification period to determine if the admission or stay is or remains
23 medically necessary;

1 ~~5. [PRTF shall:~~

2 ~~(a) Have a utilization review plan which complies with 907 KAR 1:016];~~

3 ~~(b) Appoint a utilization review committee which complies with 907 KAR 1:016 to:~~

4 ~~1. Oversee and implement the utilization review plan; and~~

5 ~~2. Evaluate each Medicaid admission prior to the expiration of the Medicaid~~
6 ~~certification period to determine the admission's compliance with medical necessity~~
7 ~~criteria and other applicable Medicaid requirements;~~

8 ~~(c)] Comply with staffing requirements established in 902 KAR 20:320;~~

9 ~~6. [(d)] Be located in the Commonwealth [state] of Kentucky;~~

10 ~~7. [(e)] Maintain accreditation by the Joint Commission on Accreditation of Health~~
11 ~~Care Organizations [(JCAHO)] or the Council on Accreditation of Services for Families~~
12 ~~and Children or any other accrediting body with comparable standards that is~~
13 ~~recognized by the state; and~~

14 ~~8. [(f)] Comply with all conditions of Medicaid provider participation established in~~
15 ~~907 KAR 1:671 and 907 KAR 1:672.~~

16 (b) A Level II PRTF shall:

17 1. Have a utilization review plan for each recipient;

18 2. Establish a utilization review process which shall evaluate each Medicaid
19 admission and continued stay prior to the expiration of the Medicaid certification period
20 to determine if the admission or stay is or remains medically necessary;

21 3. Comply with staffing requirements established in 902 KAR 20:320;

22 4. Be located in the Commonwealth of Kentucky;

23 5. Maintain accreditation by the Joint Commission on Accreditation of Health Care

Organizations or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state;

6. Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672;

7. Perform and place in each recipient's record a:

a. Medical evaluation;

b. Social evaluation; and

c. Psychiatric evaluation; and

8. Establish a plan of care for each recipient which shall:

a. Address in detail the intensive treatment services to be provided to the recipient;

and

b. Be placed in the recipient's record.

(2) A pre-admission certification review:

(a) For a Level I PRTF shall:

1. Contain:

a. The recipient's valid Medicaid identification number;

b. A valid MAP-569, Certification of Need by Independent Team Psychiatric

Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under

Age Twenty-One (21) which satisfies the requirements of 42 CFR 44.152 and 42 CFR

441.153 for patients age twenty-one (21) and under;

c. A DMS-IV R diagnosis on all five (5) axes, except that failure to record an axis IV

and V diagnosis shall be used as the basis for a denial only if those diagnoses are

critical to establish the need for Level I PRTF treatment;

d. A description of the initial treatment plan relating to the admitting symptoms;

e. Current symptoms requiring inpatient treatment;

f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level I PRTF in accordance with 907 KAR 3:130;

g. Medication history;

h. Prior hospitalization;

i. Prior alternative treatment;

j. Appropriate medical, social, and family histories; and

k. Proposed aftercare placement;

2. Remain in effect for the days certified by the review agency; and

3. Be completed within thirty (30) days; or

(b) For a Level II PRTF for a non-emergent admission shall:

1. Contain:

a. The recipient's valid Medicaid identification number;

b. A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 CFR 44.152 and 42 CFR 441.153 for patients age twenty-one (21) and under;

c. A DSM-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;

1 d. A description of the initial treatment plan relating to the admitting symptoms;
2 e. Current symptoms requiring inpatient treatment;
3 f. Information to support the medical necessity and clinical appropriateness of the
4 services or benefits of the admission to a Level II PRTF in accordance with 907 KAR
5 3:130;

6 g. Medication history;

7 h. Prior hospitalization;

8 i. Prior alternative treatment;

9 j. Appropriate medical, social, and family histories; and

10 k. Proposed aftercare placement;

11 2. Remain in effect for the days certified by the review agency; and

12 3. Be completed within thirty (30) days.

13 (3) Failure to admit a recipient within the recipient's certification period shall
14 require a new pre-admission review certification request.

15 (4) A utilization review plan for an emergency admission to a Level II PRTF shall
16 contain:

17 (a) A completed MAP 570, Medicaid Certification of Need for Inpatient Psychiatric
18 Services for Individuals Under Age Twenty-One (21):

19 1. Completed by the facility's interdisciplinary team; and

20 2. Placed in the recipient's medical record;

21 (b) Documentation, provided by telephone or electronically to the review agency
22 within two (2) days of the recipient's emergency admission, justifying:

23 1. The recipient's emergency admission;

1 2. That ambulatory care resources in the recipient's community and placement in a
2 Level I PRTF do not meet the recipient's needs;

3 3. That proper treatment of the recipient's psychiatric condition requires
4 services provided by a Level II PRTF under the direction of a physician; and

5 4. That the services can reasonably be expected to improve the recipient's condition
6 or prevent further regression so that the services are no longer needed;

7 (c) The recipient's valid Medicaid identification number;

8 (d) A valid MAP-569, Certification of Need by Independent Team Psychiatric
9 Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under
10 Age Twenty-One (21) which satisfies the requirements of 42 CFR 441.152 and
11 42 CFR 441.153 for recipients age twenty-one (21) and under;

12 (e) A DMS-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV
13 and V diagnosis shall be used as the basis for a denial only if those diagnoses are
14 critical to establish the need for Level II PRTF treatment;

15 (f)1. A description of the initial treatment plan relating to the admitting symptom; and
16 2. The initial treatment plan shall provide a full description of the intensive treatment
17 services to be provided to the recipient;

18 (g) Current symptoms requiring residential treatment;

19 (h) Medication history;

20 (i) Prior hospitalization;

21 (j) Prior alternative treatment;

22 (k) Appropriate medical, social, and family histories; and

23 (l) Proposed aftercare placement.

1 ~~(5) [(2) A PRTF shall establish procedures and processes for review, evaluation and~~
2 ~~individual plan of care development in accordance with 907 KAR 1:016.~~

3 ~~(3) For an elective admission of a recipient, an independent team shall, within a~~
4 ~~period not more than thirty (30) days prior to the admission, complete and sign a MAP~~
5 ~~569, Certification of Need form in accordance with 42 CFR 441.152 and 42 CFR~~
6 ~~441.153, and the form shall be placed in the recipient's medical record to verify~~
7 ~~compliance with this requirement.~~

8 ~~(4) For an emergency admission of a recipient, a PRTF's interdisciplinary team shall~~
9 ~~complete a MAP-570, Medicaid Certification of Need for Inpatient Psychiatric~~
10 ~~Services for individuals under age twenty-one (21), and the form shall be placed in the~~
11 ~~recipient's medical record.~~

12 ~~(5)]~~ For an individual who becomes Medicaid eligible after admission, a Level I or II
13 PRTF's interdisciplinary team shall complete a MAP 570, Medicaid Certification of Need
14 for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21), and the
15 form shall be placed in the recipient's medical record.

16 (6) For a recipient, a Level I or II PRTF shall maintain medical records that shall:

17 (a) Be:

18 1. Current;

19 2. Readily retrievable;

20 3. Organized;

21 4. Complete; and

22 5. Legible;

23 (b) Reflect sound medical recordkeeping practice in accordance with:

1 1. 902 KAR 20:320;

2 2. KRS 194A.060;

3 3. KRS 434.840 through 860;

4 4. KRS 422.317; and

5 5. 42 CFR 431 Subpart F;

6 (c) Document the need for admission and appropriate utilization of services;~~current,~~
7 ~~readily retrievable, organized, complete, legible and shall reflect~~
8 ~~sound medical recordkeeping practice, in accordance with 902 KAR 20:320, KRS~~
9 ~~194A.060, 434.840-860, 422.317 and 42 CFR 431 Subpart F;~~

10 ~~(b) Document the need for admission and appropriate utilization of services;~~

11 ~~(c) Show that the recipient was receiving intensive treatment services in accordance~~
12 ~~with 907 KAR 1:016;]~~

13 (d) Be maintained [~~in an organized central file~~], including information regarding
14 payments claimed, for a minimum of six (6)~~[five (5)]~~ years or until an audit dispute or
15 issue is resolved, whichever is longer; and

16 (e) Be made available for inspection or~~[,]~~ copying or provided to the following upon
17 request:

18 1. A representative of the United States Department for Health and Human Services
19 or its designee;

20 2. The United States Office of the Attorney General or its designee;

21 3. The Commonwealth of Kentucky, Office of the Attorney General or its designee;

22 4. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its
23 designee;

1 5. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of
2 the Inspector General or its designee; [or]

3 6. The department; or

4 7. A managed care organization with whom the department has contracted.

5 Section 3. Covered Admissions. A covered admission for a:

6 (1) Level I PRTF:

7 (a) Shall be:

8 1. Prior authorized; and

9 2. Reimbursed pursuant to 907 KAR 9:010; and

10 (b) 1. Shall be limited to those for a child age six (6) through twenty (20) years of age
11 who meets Medicaid payment status criteria; or

12 2. May continue based on medical necessity, for a recipient who is receiving active
13 treatment in a Level I PRTF on the recipient's twenty-first (21st) birthday if the recipient
14 has not reached his or her twenty-second (22nd) birthday.

15 (2) Level II PRFT shall be:

16 (a) Prior authorized;

17 (b) Limited to those for a child:

18 1.a. Age four (4) through twenty-one (21) years who meets Medicaid payment status
19 criteria; and

20 b. Whose coverage may continue, based on medical necessity, if the recipient is
21 receiving active treatment in a Level II PRTF on the recipient's twenty-first (21st)
22 birthday and the recipient has not reached his or her twenty-second (22nd) birthday;

1 2. With a severe emotional disability in addition to severe and persistent aggressive
2 behaviors, intellectual disability, sexually acting out behaviors, or a developmental
3 disability; and

4 3.a. Who does not meet the medical necessity criteria for an acute care hospital,
5 private psychiatric hospital, or state mental hospital; and

6 b. Whose treatment needs cannot be met in an ambulatory care setting, Level I
7 PRTF, or in any other less restrictive environment; and

8 (c) Reimbursed pursuant to 907 KAR 9:010.

9 Section 4. PRTF Covered Services and Coverage Criteria. (1) To be covered by the
10 department:

11 (a) The following services shall be prior authorized and meet the requirements
12 established in paragraph (b) of this subsection:

13 1. Diagnostic and assessment services;

14 2. Treatment plan development;

15 3. Psychiatric services;

16 4. Nursing services which shall be provided in compliance with 902 KAR 20:320;

17 5. Medication which shall be provided in compliance with 907 KAR 1:019;

18 6. Evidence-based treatment interventions;

19 7. Individual therapy which shall comply with 902 KAR 20:320;

20 8. Family therapy which shall comply with 902 KAR 20:320;

21 9. Group therapy which shall comply with 902 KAR 20:320;

22 10. Individual and group interventions that shall focus on additional and harmful use
23 or abuse issues and relapse prevention if indicated;

1 11. Substance abuse education which shall comply with 902 KAR 20:320;

2 12. Activities that:

3 a. Support the development of an age-appropriate daily living skill including positive
4 behavior management or support; or

5 b. Support and encourage the parent's ability to re-integrate the child into the home;

6 13. Crisis intervention which shall comply with:

7 a. 42 CFR 483.350 through 376; and

8 b. 902 KAR 20:320;

9 14. Consultation with other professionals including case managers, primary care
10 professionals, community support workers, school staff, or others;

11 15. Educational activities; or

12 16. Non-medical transportation services as needed to accomplish objectives;

13 (b) A Level I PRTF service listed in paragraph (a) of this subsection shall be:

14 1. Provided under the direction of a physician;

15 2. Described in the recipient's current treatment plan;

16 3. Provided at least once per week, except for diagnostic and assessment services
17 which shall have no weekly minimum requirement;

18 4. Medically necessary; and

19 5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

20 (c) A Level I PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be
21 provided by a qualified mental health professional; or

22 (d) A Level II PRTF service listed in paragraph (a) of this subsection shall be:

23 1. Provided under the direction of a physician;

1 2. Described in the recipient's current treatment plan;

2 3. Provided at least once a week:

3 a. Unless the service is necessary twice a week, in which case the service shall be
4 provided at least twice a week; or

5 b. Except for diagnostic and assessment services which shall have no weekly
6 minimum requirement;

7 4. Medically necessary; and

8 5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

9 (2) A Level II PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be
10 provided by a qualified mental health professional.

11 Section 5. Determining Patient Status. (1) The department shall review and
12 evaluate the health status and care needs of a recipient in need of Level I or II PRTF
13 care using the criteria identified in 907 KAR 3:130 to determine if a service or benefit is
14 clinically appropriate.

15 (2) The care needs of a recipient shall meet the patient status criteria for:

16 (a) Level I PRTF care if the recipient requires:

17 1. Long term inpatient psychiatric care or crisis stabilization more suitably provided in
18 a PRTF than in a psychiatric hospital; and

19 2. Level I PRTF services on a continuous basis as a result of a severe mental or
20 psychiatric illness, including a severe emotional disturbance; or

21 (b) Level II PRTF care if the recipient:

22 1. Is a child with a severe emotional disability;

1 2. Requires long term inpatient psychiatric care or crisis stabilization more suitably
2 provided in a PRTF than a psychiatric hospital;

3 3. Requires Level II PRTF services on a continuous basis as a result of a severe
4 emotional disability in addition to a severe and persistent aggressive behavior,
5 an intellectual disability, a sexually acting out behavior, or a developmental disability;
6 and

7 4. Does not meet the medical necessity criteria for an acute care hospital or a
8 psychiatric hospital and has treatment needs which cannot be met in an ambulatory
9 care setting, Level I PRTF, or other less restrictive environment.

10 Section 6. Durational Limit, Re-evaluation, and Continued Stay. (1) A recipient's stay,
11 including the duration of the stay, in a Level I or II PRTF shall be subject to the
12 department's approval.

13 (2)(a) A recipient in a Level I PRTF shall be re-evaluated at least once every thirty
14 (30) days to determine if the recipient continues to meet Level I PRTF patient status
15 criteria.

16 (b) A Level I PRTF shall complete a review of each recipient's treatment plan of care
17 shall at least once every thirty (30) days.

18 (c) The review referenced in paragraph (b) of this subsection shall include:

19 1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or
20 conservator;

21 2. An assessment of progress toward each treatment plan goal and objective with
22 revisions indicated; and

23 3. A statement of justification for the level of services needed including:

1 a. Suitability for treatment in a less-restrictive environment; and

2 b. Continued services.

3 (d) If a recipient no longer meets Level I PRTF patient status criteria, the
4 department shall only reimburse through the last day of the individual's current
5 approved stay.

6 (3) A Level II PRTF shall complete by no later than the third (3rd) day following an
7 admission, an initial review of services and treatment provided to a recipient which shall
8 include:

9 (a) Dated signatures of appropriate staff, parent, guardian, legal custodian, or
10 conservator;

11 (b) An assessment of progress toward each treatment plan goal and objective with
12 revisions indicated; and

13 (c) A statement of justification for the level of services needed including:

14 1. Suitability for treatment in a less-restrictive environment; and

15 2. Continued services.

16 (3)(a) For a recipient aged four (4) to five (5) years, a Level II PRTF shall complete a
17 review of the recipient's treatment plan of care at least once every fourteen (14) days
18 after the initial review referenced in subsection (3) of this section.

19 (b)The review referenced in paragraph (a) of this subsection shall include:

20 1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or
21 conservator;

22 2. An assessment of progress toward each treatment plan goal and objective with
23 revisions indicated; and

1 3. A statement of justification for the level of services needed including:

2 a. Suitability for treatment in a less-restrictive environment; and

3 b. Continued services.

4 (4)(a) For a recipient aged six (6) to twenty-two (22) years, a Level II PRTF shall
5 complete a review of the recipient's treatment plan of care at least once every thirty (30)
6 days after the initial review referenced in subsection (3) of this section.

7 (b) The review referenced in paragraph (a) of this subsection shall include:

8 1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or
9 conservator;

10 2. An assessment of progress toward each treatment plan goal and objective with
11 revisions indicated; and

12 3. A statement of justification for the level of services needed including:

13 a. Suitability for treatment in a less-restrictive environment; and

14 b. Continued services.

15 Section 7. [shall be:

16 (1) Preauthorized;

17 (2) Limited to those for children age six (6) through twenty (20) years of age who
18 meet Medicaid payment status criteria. Coverage may continue, based on medical
19 necessity, for a recipient who is receiving active treatment in a PRTF on his 21st
20 birthday so long as he has not reached his 22nd birthday; and

21 (3) Reimbursed in accordance with 907 KAR 9:010.

22 Section 4. Durational Limitations. Recipient stays shall be subject to utilization review
23 by the cabinet.

~~Section 5. Determining Patient Status. (1) The department shall review and evaluate the health status and care needs of a recipient in need of inpatient psychiatric care using the same standards as established for inpatient psychiatric hospital care in 907 KAR 1:016.~~

~~(2) The care needs of a recipient shall meet PRTF patient status criteria only if:~~

~~(a) The individual meeting the patient status criteria in 907 KAR 1:016 requires long-term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF rather than a psychiatric hospital; and~~

~~(b) The recipient requires PRTF services on a continuous basis as a result of a severe mental or psychiatric illness, including severe emotional disturbances.~~

~~Section 6. Reevaluation of Need for Services. Patient status shall be reevaluated for a PRTF recipient at thirty (30) day intervals. If a reevaluation reveals the recipient no longer requires PRTF care, payment shall continue only through the last day for which the stay is certified.~~

~~Section 7.] Exclusions and Limitations in Coverage. (1) The following shall not be covered as Level I or II PRTF services:~~

~~(a) 1. Chemical dependency treatment services if the need for the services is the primary diagnosis of the recipient, except[-However,] chemical dependency treatment services shall be covered as incidental treatment if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis;~~

~~(b) Outpatient services;~~

~~(c) Pharmacy services, which shall be covered [as pharmacy services-]in accordance with 907 KAR 1:019; [or]~~

(d) Durable medical equipment, which shall be covered ~~[as a durable medical equipment benefit]~~ in accordance with 907 KAR 1:479;

(e) Hospital emergency room services, which shall be covered in accordance with 907 KAR 10:014;

(f) Acute care hospital inpatient services, which shall be covered in accordance with 907 KAR 10:012;

(g) Laboratory and radiology services, which shall be covered in accordance with 907 KAR 10:014 or 907 KAR 1:028;

(h) Dental services, which shall be covered in accordance with 907 KAR 1:026;

(i) Hearing and vision services, which shall be covered in accordance with 907 KAR 1:038; or

(j) Ambulance services, which shall be covered in accordance with 907 KAR 1:060.

(2) A Level I or II PRTF shall not charge a recipient or responsible party representing a recipient any difference between private and semiprivate room charges.

(3) The department shall not reimburse for Level I or II PRTF services for a recipient~~[Services shall not be covered]~~ if appropriate alternative services are available for the recipient in the community.

(4) The following shall not qualify as reimbursable in a PRTF setting~~[for a PRTF service]~~:

(a) An admission that is not medically necessary;

(b) Services for an individual;

1. With a major medical problem or minor symptoms;

1 ~~2.[(c) An individual]~~ Who might only require a psychiatric consultation rather than an
2 admission to a PRTF~~[psychiatric facility]~~; or

3 ~~3.[(d) An individual]~~ Who might need only adequate living accommodations,
4 economic aid, or social support services.

5 Section 8. Reserved Bed Days. (1) The department may cover a bed reserve day for
6 a recipient's absence from a Level I or II PRTF if:

7 (a) The recipient:

8 1. Is in Medicaid payment status in a Level I or II PRTF;

9 2. Has been in the Level I or II PRTF overnight for at least one (1) night;

10 3. Is reasonably expected to return requiring Level I or II PRTF care; and

11 4. Has not exceeded the bed reserve day limit established in subsection (2) of this
12 section; and

13 (b) The Level I or II PRTF's occupancy percent is at least fifty (50) percent.

14 (2)(a) The annual bed reserve day limit per recipient per Level I or II PRTF shall be
15 five (5) days per calendar year.

16 (b) The department may allow a recipient to exceed the limit established in paragraph
17 (a) of this subsection, if the department determines that an additional bed reserve day is
18 in the best interest of the recipient.

19 Section 9. Federal Financial Participation. A policy established in this administrative
20 regulation shall be null and void if the Centers for Medicare and Medicaid Services:

21 (1) Denies or does not provide federal financial participation for the policy; or

22 (2) Disapproves the policy.~~[The department shall cover reserved bed days in~~
23 ~~accordance with the following specified upper limits and criteria:~~

1 ~~(1) Upper limits for reserved beds shall be applied as follows:~~

2 ~~(a) A maximum of fourteen (14) days per admission for an acute care hospital stay;~~

3 ~~(b) A maximum of fourteen (14) days per calendar year for an admission to a mental~~
4 ~~hospital or a psychiatric bed of an acute care hospital;~~

5 ~~(c) A maximum of twenty one (21) days per six (6) months during a calendar year for~~
6 ~~other leaves of absence; and~~

7 ~~(d) A maximum of thirty (30) consecutive days for hospital and other leaves of~~
8 ~~absence combined.~~

9 ~~(2) The following criteria shall be met for reserved bed days to be covered:~~

10 ~~(a) The recipient shall be in Medicaid payment status in the PRTF and shall have~~
11 ~~been in the facility at least overnight;~~

12 ~~(b) The recipient shall be reasonably expected to return to PRTF level of care;~~

13 ~~(c) Due to the demand at the facility for PRTF care, there is likelihood the bed would~~
14 ~~be occupied by some other patient, if it had not been reserved;~~

15 ~~(d) Hospitalization shall be in a Medicaid-participating hospital with the admission~~
16 ~~appropriately approved by the department; and~~

17 ~~(e) For a leave of absence other than for hospitalization, the recipient's physician~~
18 ~~orders, and the recipient's plan of care shall provide for, a leave, which may include a~~
19 ~~leave of absence to visit with relatives and friends.]~~

20 Section 10.~~[9.]~~ Appeal Rights. (1) An appeal of a negative action regarding a
21 Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

22 (2) An appeal of a negative action regarding Medicaid eligibility of an individual shall
23 be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 11,~~[40]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) “MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21)”, revised 5/90; and

(b) “MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-one (21)”, revised 5/90.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, ~~[Third Floor East,]~~ Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (18 Ky.R. 600; eff. 10-6-91; Am. 19 Ky.R. 2340; eff. 6-16-93; 22 Ky.R. 1906; eff. 6-6-96; 27 Ky.R. 2910; 3267; eff. 6-8-2001.)

907 KAR 9:005E

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 9:005E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact: Jill Hunter (502) 564-5707 or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes Medicaid coverage policies regarding Level I and II psychiatric residential treatment facility (PRTF) services.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid coverage policies regarding Level I and II PRTF services.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid coverage policies regarding Level I and II PRTF services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage policies regarding Level I and II PRTF services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: Previously, Kentucky law established one category of psychiatric residential treatment facility services. In 2010, the Kentucky legislature enacted legislation which created two levels of PRTF services – Level I and II. This amendment replaces the coverage policies for the prior lone designation of psychiatric residential treatment facility services with coverage policies for Level I and II PRTF services respectively.
 - (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comport with KRS 216B.450.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 216B.450 by establishing Medicaid coverage policies regarding Level I and II PRTF services.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 216B.450 by establishing Medicaid coverage policies regarding Level I and II PRTF services.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II psychiatric residential treatment facilities will be affected by the amendment. Level I and II PRTF beds are awarded through a certificate of need process. The

Office of Certificate of Need has limited the number of Level I PRTF beds statewide to 315 and the number of Level II PRTF beds to 145 statewide. Of the 315 Level I beds, 303 are currently filled and span thirty-three (33) facilities. Of the 145 Level II PRTF beds, 132 are currently filled and among six (6) facilities.

- (3) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I and II PRTFs will have to comply with service requirements.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the regulated entities.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Participating Level I and II PRTFs will be recognized by the Medicaid program as authorized service providers.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.
 - (b) On a continuing basis: Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes

nor increases any fees.

- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is applied as individuals receiving care in a Level II PRTF have more intensive needs than children in a Level I PRTF; thus, some service requirements vary accordingly.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 9:005E

Agency Contact: Jill Hunter (502) 564-5707 or Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 USC 1396a(a)(10), 42 USC 1396d(a)(16), 42 USC 1396d(h), 42 CFR 441.151 and 42 CFR 440.160.
2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.
3. Minimum or uniform standards contained in the federal mandate.

Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty – one 21.) Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT).

Pursuant to 42 CFR 440.160, “Inpatient psychiatric services for individuals under age 21” means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter.”

Additionally, 42 CFR 441.151 states, “(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion.”

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 9:005E

Agency Contact: Jill Hunter (502) 564-5707 or Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 CFR 441.151 and 42 CFR 440.160.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.
 - (d) How much will it cost to administer this program for subsequent years? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: